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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,102	12/05/2006	Samuel Pruvot	Q9-483	7427
23373 7590 04/29/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER BAINBRIDGE, ANDREW PHILIP				
ART UNIT		PAPER NUMBER		
3754				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/576,102

**Applicant(s)**

PRUVOT ET AL.

**Examiner**

ANDREW P. BAINBRIDGE

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date 4/18/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claims 1-8, the phrase "such as" (claim 1, line 2) renders the claim and depending claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

4. Claims 7- 8 recite the limitation "**said over moulded seal (18)**" in claim 7, line 2 and claim 8, line 3. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1 and 5 are rejected under 35 U.S.C. 102(b)** as being anticipated by US 5,752,629 (Hardy).

7. Hardy in figures 2-5 discloses a fluid product dispensing device 200, 210 with a fluid reservoir 212 and a dispensing unit 230 pump 230, 252 to dispense the fluid in the fluid reservoir 212, the dispensing head 230, 252 manually actuates the dispensing unit 230, 249, the reservoir being a single piece 210 with (this is embodiment "a") one orifice 270 adapted to hold a filter 284 to filter air 284 (col. 8, lines 45-67) entering the reservoir 212 at all times, the orifice 270 is located on the sidewall 270 of the reservoir 210 (see figure 5).

8. **Claims 1 and 8 are rejected under 35 U.S.C. 102(b)** as being anticipated by US 2003/0150882 (Bougamont et al.).

9. Bougamont in figures 2-2C discloses a fluid product dispenser (see figure 2A) with a reservoir R containing a fluid product (paragraph 0025) with a pump P that dispenses the product of the fluid reservoir with a dispensing head K to actuate the pump P the reservoir R is a single piece with (this is embodiment "b") a neck seal J with a raised ring or bump R (see figure 2A) for the seal J to serve as a reception profile for the seal J that is held in place by the ferrule D.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. **Claims 2-3 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Bougamont in view of US 4,830,284 (Maerte).

13. Bougamont has all of the elements of claims 2-3 except for the reservoir having a first radial projection and an axially aligned second radial projection that serve to retain the dispensing head as it actuates, and to create starting and stopping points for actuation. Maerte in figure 1 teaches a dispensing head 31 that is retained on the reservoir 12, 14, by a first radial projection 33 that is axially aligned with a second radial projection shoulder 12 that serve as starting and stopping points for the dispensing head's 31 actuation. It would be obvious to one of ordinary skill in the art to adapt Maerte to Bougamont because Maerte teaches a well understood and reliable way to control the actuation cycle of the dispenser.

14. **Claim 4 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Hardy in view of US 6,257,455 (Trepina et al.).

15. Hardy has all of the elements of claim 4 except for the filter being welded onto the reservoir. Trepina in figures 1-4 teaches a filter layer 72 on a surface 66 that is sonically welded over the orifice 68 (col. 3, lines 20-50). It would be obvious to one of

ordinary skill in the art to adapt Trepina to Hardy because Trepina teaches a well known and reliable way to ensure that the filter stays in place during use.

16. **Claims 6-7 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Bougamont.

17. Bougamont has all of the elements of claims 6-7 except for the reservoir being made by injection molding of a thermoplastic material, and the neck seal is TPE by dual injection blow molding. Those selections of materials and processes are all very well known in the art. It would be obvious to one of ordinary skill in the art to make the parts of the fluid product dispenser by injection and dual injection blow molding as these are very well known processes in the art that are chosen often because of the resulting reliability, economy and availability. It would be obvious to one of ordinary skill in the art to choose thermoplastic material and TPE because they are both well known in the art to create either a very rigid and cheap container or an elastic material that is reliable over time.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art  
Unit 3754